



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,028	03/26/2004	Ryszard Szczepanski	F-8441	8412

24131 7590 07/18/2006

LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD, FL 33022-2480

EXAMINER

BROWN, MICHAEL A

ART UNIT PAPER NUMBER

3764

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,028

Applicant(s)

SZCZEPANSKI, RYSZARD

Examiner

Michael Brown

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 8-16 is/are rejected.
- 7) ☒ Claim(s) 3-7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3-26-04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn '790.

Quinn discloses in figures 1-5 a combination rotary drive 1, a massager for a attachment to the drive, the massager comprising a massage head including a substantially spherical core 22, having an uninterrupted curved surface section (fig. 4), a cover assembly 4, surrounding the spherical core, a drive shaft 11 connected to the spherical core, a connector 8 for attaching the massager to the drive, an attachment 12, for transferring rotary motion from the drive to the drive shaft and a tubular sleeve 6 surrounding the drive shaft.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn in view of Nagano.

Quinn discloses in figures 1-6 a massager, substantially as claimed. However, Quinn doesn't disclose the drive shaft being tapered and having a threaded end. Nagano teaches in figures 1-3 a shaft 1, being tapered (at 14) and having a threaded end 14b. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the tapered shaft having a threaded end as taught by Nagano could be substituted for the drive shaft disclosed by Quinn because either shaft could be used to attach balls to the massager. On the other hand the tapering and threaded end could be incorporated into the drive shaft disclosed by Quinn in order to use a nut to fasten the drive shaft to the balls and the massager. The ball disclosed by Quinn has a recess that 21 passes into. The recess is covered by a cover 24.

Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn in view of Vitale.

Quinn discloses in figures 1-6 a massager, substantially as claimed. However, Quinn doesn't disclose the spherical core having beveled surfaces, the balls being different sizes, the core having grooves and high spots, the grooves being perpendicular to the drive shaft. Quinn teach a three-headed drive 20. Vitale teaches in figures 1-3 a spherical core 10 having beveled surface 18 and grooves 20 that provide high spots. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the spherical core having beveled surfaces and grooves that provide high spots as taught by Vitale could be incorporated into the spherical core disclosed by Quinn. The beveled surface would allow an object such as a small ball to be inserted therein. The grooves would provide air-lines to permit air to

Art Unit: 3764

flow over the balls during massaging. The high spots would permit air to flow around the spherical core. It is old and well known that the rotary drive can be a razor as disclosed by the Applicant in the specification of the present invention. Quinn discloses a gearbox (col. 2, lines 8). It is a design choice to have balls that are different sizes. The drive shaft would be perpendicular to the grooves on the spherical core.

Allowable Subject Matter

Claims 3-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 17-20 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hunt and Pokorny, each discloses a massager.

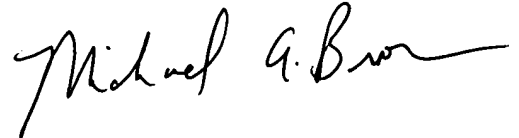
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown
July 2, 2006

A handwritten signature in black ink, reading "Michael A. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

**MICHAEL A. BROWN
PRIMARY EXAMINER**